

1 KAREN P. HEWITT  
United States Attorney  
2 AARON B. CLARK  
Assistant United States Attorney  
3 California State Bar No. 239764  
United States Attorney's Office  
4 Federal Office Building  
880 Front Street, Room 6293  
5 San Diego, California 92101  
Telephone: (619) 557-6787  
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7 Attorneys for Plaintiff  
UNITED STATES OF AMERICA

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,	)	Criminal Case No. 07CR3218-JM
11	)	
12 Plaintiff,	)	
13 v.	)	<b>STIPULATION OF FACT AND JOINT</b>
14 HUGO ISRAEL RODRIGUEZ-ARZATE	)	<b>MOTION FOR RELEASE OF</b>
(3),	)	<b>MATERIAL WITNESS AND ORDER</b>
15 Defendant.	)	<b>THEREON</b>

16  
17 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff,  
18 UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States  
19 Attorney, and Aaron B. Clark, Assistant United States Attorney, and defendant HUGO ISRAEL  
20 RODRIGUEZ-ARZATE, with the advice and consent of defense counsel, Jack Boltax:

21 1. Defendant agrees to execute this stipulation and to participate in a full and complete  
22 inquiry by the Court into whether defendant knowingly, intelligently and voluntarily entered into  
23 it.

24 2. The material witnesses in this case:

- 25 a. Are aliens with no lawful right to enter or remain in the United States;  
26 b. Entered or attempted to enter the United States illegally on or about  
27 November 15, 2007;  
28 c. Were found in a boat driven by defendant Dale Stamper in the Pacific Ocean,  
approximately ten miles North of the International Border at position 32° 42'N 117° 21'W, and that

1 defendant knew or acted in reckless disregard of the fact that they were aliens with no lawful right  
2 to enter or remain in the United States;

3 d. were paying between \$3,500.00 to \$4500.00 to individuals associated with  
4 defendant to be brought into the United States illegally and/or transported illegally to a destination  
5 therein; and,

6 e. May be released and remanded immediately to the Department of Homeland  
7 Security for return to their country of origin.

8 3. After the material witnesses are ordered released by the Court pursuant to this  
9 stipulation and joint motion, if defendant withdraws his guilty plea to the charge of bringing in an  
10 alien without presentation, in violation of 8 U.S.C. § 1324(a)(2)(B)(iii), defendant agrees that in any  
11 proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral  
12 attack, that:

13 a. The stipulated facts set forth in paragraph 2 above shall be admitted as  
14 substantive evidence;

15 b. The United States may elicit hearsay testimony from arresting agents  
16 regarding any statements made by the material witness(es) provided in discovery, and such  
17 testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements  
18 against interest of (an) unavailable witness(es); and,

19 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),  
20 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted  
21 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant  
22 waives the right to confront and cross-examine the material witness(es) in this case.

23 4. By signing this stipulation and joint motion, defendant certifies that defendant has  
24 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
25 further that defendant has discussed the terms of this stipulation and joint motion with defense  
26 counsel and fully understands its meaning and effect.

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28 Stipulation of Fact and Joint Motion for Release of  
Material Witness And Order Thereon in  
United States v. Rodriguez-Arzate (3)


1 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
2 immediate release and remand of the above-named material witness to the Department of Homeland  
3 Security for return to his country of origin.

4 It is STIPULATED AND AGREED this date.

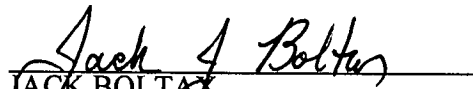
5 Respectfully submitted,

6 KAREN P. HEWITT  
7 United States Attorney

8 Dated: 3/27/09.

  
9 AARON B. CLARK  
Assistant United States Attorney

10 Dated: 3/27/09.

  
11 JACK BOLTAX  
12 Defense Counsel for Hugo Israel Rodriguez-Arzate

13 Dated: 3/27/09.

  
14 HUGO ISRAEL RODRIGUEZ-ARZATE  
15 Defendant  
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28 Stipulation of Fact and Joint Motion for Release of  
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**ORDER**

Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence, and,

**IT IS ORDERED** that the above-named material witness be released and remanded forthwith to the Department of Homeland Security for return to her country of origin.

**SO ORDERED.**

Dated: 4-10-08.

  
HONORABLE NITA L. STORMS  
United States Magistrate Judge